

VZCZCXRO5342
OO RUEHDBU
DE RUEHBUL #5980/01 3620814
ZNY CCCCC ZZH
O 280814Z DEC 06
FM AMEMBASSY KABUL
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5114
INFO RUCNAFG/AFGHANISTAN COLLECTIVE PRIORITY
RUEHZG/NATO EU COLLECTIVE PRIORITY
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY
RUEAIIA/CIA WASHINGTON DC PRIORITY
RHEFDIA/DIA WASHINGTON DC PRIORITY
RUEKJCS/OSD WASHINGTON DC PRIORITY
RUEKJCS/SECDEF WASHINGTON DC PRIORITY
RUEKJCS/JOINT STAFF WASHINGTON DC PRIORITY
RHMFISS/HQ USCENTCOM MACDILL AFB FL PRIORITY
RHMFISS/COMSOCENT MACDILL AFB FL PRIORITY
RUCNDT/USMISSION USUN NEW YORK PRIORITY 3490
RHMFISS/DEPT OF JUSTICE WASHINGTON DC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 KABUL 005980

SIPDIS

SIPDIS

STATE FOR SCA/FO,SCA/A,INL/FO,S/CRS, SA/PB, S/CT,
EUR/RPM
STATE PASS TO USAID FOR AID/ANE, AID/DCHA/DG
NSC FOR AHARRIMAN
OSD FOR KIMMITT
CENTCOM FOR CFC-A, CG CJTF-76, POLAD, JICCENT

E.O. 12958: DECL: 12/28/2016

TAGS: [PREL](#) [PGOV](#) [PTER](#) [ASEC](#) [MARR](#) [AF](#)

SUBJECT: FINDING COMMON GROUND ON CORRUPTION TRIALS BETWEEN
THE ATTORNEY GENERAL AND THE CHIEF JUSTICE

Classified By: Charge 'd' Affaires a.i., Richard Norland for reasons 1.
4 (B) and (D).

SUMMARY

¶1. (C) Afghanistan,s Attorney General Sabit has made a number of comments recently to officials of the U.S. and other governments that are critical of the policies and practices of Chief Justice Azimi in connection with anti-corruption cases filed in some provinces by Sabit. Some of these comments have filtered their way back to the Chief Justice, creating the danger of a personal rift as well as a professional difference of opinion between two of our greatest hopes for judicial reform. We are working to find common ground between the two of them on a professional level and allow that to rebuild their trust and confidence in one another on a personal level. END SUMMARY.

¶2. (C) In recent weeks, Attorney General Sabit has been talking with various USG officials in Kabul and those visiting from Washington about the need for a special anti-corruption court. He has been making similar overtures to other members of the international community (IC). His basic model for the proposal has been the existing criminal justice task force (CJTF) and the counter-narcotics tribunal (CNT). However, he has offered alternatives such as moving all corruption cases above a certain amount for trial in the existing Kabul district courts.

¶3. (C) Among the primary justifications for Sabit,s proposals are his frustrations with the outcome of cases he has filed during his visits to &monitor the implementation of the law8 in provinces like Herat, Nangahar and Kunar. In Herat, Sabit claims that the trials of the cases that he filed were not public, in contravention of the Constitution, and that the sentences resulting from the convictions were ridiculously low. In the cases filed in Kunar and Nangahar,

Sabit is frustrated by the fact that the Supreme Court has refused to change the venue of the cases to Kabul.

¶4. (C) In each instance, Sabit has personally blamed Chief Justice Azimi for failing to intervene appropriately. Sabit wanted Azimi to warn the Herat judges against taking bribes, and Azimi refused. Azimi also refused to change the venue in all of the cases requested by Sabit. Sabit believes part of the problem is that Azimi is &jealous8 of the attention that Sabit is receiving for his anti-corruption efforts.

¶5. (C) For his part, Chief Justice Azimi resents the fact that Sabit airs his complaints to the IC rather than internally. Azimi says that he has started to hold monthly meetings that include the AGO, MOJ, MOI, MCN and others to work out strategy and conflicts. He believes that Sabit should air his concerns in that forum, and that his outreach to the IC is &egotistical.8

¶6. (C) Contrary to Sabit,s claims, Azimi says that the Herat cases were not &closed,8 although no one apparently attended them. Azimi says that he has instructed all his judges to make sure that all cases initiated by Sabit on his provincial trips are held publicly. As for the light sentences, Azimi says that the trial judges in Herat were qualified and were the only ones to review the file; he sees no reason to second-guess them. In general, he believes the courts in Herat are stronger than those in Kabul. Moreover, Sabit can appeal the sentences if he wishes to do so.

¶7. (C) As for complaints about his refusal to change venue, Azimi says that a change of venue is warranted only in exceptional cases, citing the example of a warlord being tried in a district court with inadequate security

KABUL 00005980 002 OF 002

provisions. He believes that Sabit is trying to use the provision too broadly. Azimi has granted some of Sabit,s requests, moving some cases to Kabul and recently moving one of the cases Sabit filed in Kunar out of that province, where he believes the courts are weak. But he changed the venue to Nangahar, not Kabul, because Nangahar is much closer to the locus of the crime and the location of the witnesses, and because he believes the Nangahar courts are just as strong as those in Kabul. For the same reason, he has turned down Sabit,s requests to change the venue of the Nangahar cases to Kabul. In Azimi,s view, changing the venue of the case because of doubts about securing a fair trial is a significant step. It imposes a burden on litigants and witnesses and constitutes a major insult to the local officials involved, including both the provincial judges and the governors. It should therefore be a measure that is used only when necessary.

¶8. (C) For similar reasons, Azimi opposes Sabit,s idea of moving all (or all significant) corruption cases to Kabul, whether in a new specialized tribunal or for trial in the regular Kabul courts. He is willing to do that in the exceptional case, but not as a matter of course. He believes that many of the provincial courts are capable of trying these cases just as fairly and effectively as are any courts in Kabul. He feels the same way about narcotics cases and for that reason does not believe that the creation of the special Counter-Narcotics Tribunal (CNT) was a good idea.

¶9. (C) A number of our IC colleagues feel similarly about the CNT, still smarting over the fact that the CJTF and CNT were a USG-sponsored creation established by decree on the eve of Parliament,s establishment. They have not been receptive to the idea of another special tribunal carved out of the judiciary. They have been more open to the notion of cases above a certain monetary level being moved to the Kabul courts for trial, where they would be more open to IC oversight.

¶10. (C) While Post has some sympathy for Sabit,s views, and

acknowledges that moving parts of the judicial system forward in a concentrated fashion has certain advantages over trying to drag the entire regime into the 21st century, we are also extremely sensitive to: the need for visible rule of law at the provincial level; the views of the IC; and finding a common position between Sabit and Azimi. The two of them represent the best hope for progress at this time in the justice community. If they disagree on an approach and either or both of them look to the international community to resolve their personal or professional differences, Post can not envision the development of an effective policy.

¶11. (C) COMMENT: It appears at this time that the common ground between Sabit and Azimi, and within the IC, is to avoid the creation of a new specialized tribunal and to focus instead on changing the venue of major corruption cases from weak courts to strong ones that are better able to withstand threats and corruption. Post and the IC here will work with the Attorney General and Chief Justice to find a compatible system for determining which cases fall into that category and which courts are suitable for trying them.

NORLAND